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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MONICA COLE,

Plaintiff and Respondent,

v.

MICHELLE WASHINGTON,

Defendant and Appellant.

A156404

(Alameda County
Super. Ct. No. HF18929904)

Michelle Washington appeals from the denial of her motion to terminate a domestic violence restraining order issued against her. Because she has not met her burden to show error, we affirm.

BACKGROUND

Monica Cole applied for a domestic violence restraining order against her sister, Michelle Washington. Cole alleged Washington sent e-mails threatening and blackmailing her. Cole also claimed Washington sent e-mails denigrating her to her employer. Cole attached copies of several e-mails to her application, all of which were sent under pseudonym e-mail accounts even though Washington repeatedly identified herself by demanding Cole repay money she borrowed from Washington. In at least two e-mails, Washington referenced how she contacted Cole's employer to pressure Cole into repaying her.

The superior court issued a temporary restraining order protecting Cole from Washington and ordered both parties to appear in court a few weeks later to determine whether a permanent restraining order would be issued. Washington was served a copy

of the temporary restraining order during a small claims court hearing two weeks after it was issued. The parties were in small claims court because Washington had sued Cole to recoup the borrowed money. Cole countersued for damages she suffered when Washington harassed her by e-mailing her and her employer.

When Cole and Washington appeared for a hearing to determine whether a restraining order should be issued, the court asked Cole why she wanted the order. Cole explained that Washington was sending her and her employer harassing e-mails to collect money Cole owed her. In an attempt to get Cole fired, Washington also met with Cole's human resources department to inform Cole's employer that she was a "deplorable employee."

Washington countered that she contacted Cole's employer because Cole's countersuit alleged Washington's harassment caused her to take leave from work. Washington also claimed Cole refused to repay her and had threatened to hit her in the mouth. Washington alleged Cole was untrustworthy based on her history of fraud and driving under the influence.

At the end of the hearing, the court issued a restraining order prohibiting Washington from attacking, striking, or harassing Cole and from contacting Cole's employers for one year. The court indicated the parties said they wanted nothing to do with one another, so it was "giv[ing] them a way to do that." The court declined to issue a stay-away order because the sisters might need to be present at the same location to assist their mother.

A week later, Washington filed a motion to terminate the restraining order, which was denied after a hearing. Washington has not provided us a transcript of that hearing.

DISCUSSION

As an initial matter, we summarize relevant principles of appellate practice. Most fundamentally, a judgment or order challenged on appeal is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent" (*ibid.*),

and it is the appellant's burden to affirmatively demonstrate error, even in the absence of a brief from respondent (*Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1077–1078).

Washington, as appellant, must therefore provide this court an adequate record for review, and failure to do so requires us to resolve issues against her. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) Washington must also present reasoned argument and legal authority to support her contentions, or we may treat those contentions as forfeited. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.) These principles apply not only to appeals where parties are represented by counsel, but also to appeals where parties represent themselves, as Washington does here. (See *Stokes v. Henson* (1990) 217 Cal.App.3d 187, 198 [self-represented party is entitled to the same consideration as other litigants and attorneys, but not more].)

Washington has not met her burden to show the trial court abused its discretion in denying her request. Her attempt to do so was hindered by her election to proceed with her appeal without a transcript of the hearing concerning her motion to terminate the restraining order. In the absence of a reporter's transcript we “ ‘have no way of knowing . . . what grounds were advanced, what arguments were made and what facts may have been admitted, mutually assumed or judicially noticed at the hearing. In such a case, no abuse of discretion can be found except on the basis of speculation.’ ” (*Snell v. Superior Court* (1984) 158 Cal.App.3d 44, 49.) The record only tells us that Washington's request to terminate the restraining order was denied after she and Cole testified.

Washington's legal arguments also misunderstand when a court may issue a restraining order under the Domestic Violence Prevention Act (the Act). Specifically, Washington claims she may contact Cole repeatedly to collect the debt.

The Act expressly authorizes the court to issue an order prohibiting a party from, among other things, “stalking, threatening, . . . harassing, . . . contacting, either directly or indirectly, by mail or otherwise, . . . or disturbing the peace of the other party.” (Fam. Code, § 6320.) The Act therefore permits the prohibition of verbal abuse that seriously disturbs the recipient's peace of mind, such as Washington's repeated harassment via e-mail to Cole and Cole's employer. (*In re Marriage of Evilsizor & Sweeney* (2015)

237 Cal.App.4th 1416, 1425 [Act’s “definition of abuse ‘is not confined to physical abuse but specifies a multitude of behaviors which does not involve any physical injury or assaultive acts’ ”]; *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1299 [affirming restraining order issuance based solely on nonviolent conduct, including the “restrained party placing annoying telephone calls or sending unwanted e-mails, letters, or the like”].) The Act does not contain any exception for harassment intended to collect a debt.

Washington further claims her actions are protected by the First Amendment. There is no evidence this argument was presented to the court below and, absent extenuating circumstances, we do not consider arguments that could have been but were not so presented. (*In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1002.) Even if this argument were properly before us, we would still “reject [it] because [Washington’s] ability to continue to engage in activity that has been determined after a hearing to constitute abuse [under the Act] is not the type of ‘speech’ afforded constitutional protection.” (*In re Marriage of Evilsizor & Sweeney, supra*, 237 Cal.App.4th 1416, 1427; see *id.* at pp. 1428–1430.)

In sum, Washington has not shown us that the superior court abused its discretion, and case law directly contradicts the arguments she articulated.

DISPOSITION

The judgment is affirmed.

BURNS, J.

WE CONCUR:

JONES, P. J.

SIMONS, J.

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